

DATE: November 30, 2021

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In Re: )

[REDACTED] )

) Claims Case No. 2021-CL-042308.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

**DECISION**

The claimant, a former spouse of a deceased member of the U.S. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-042308, dated August 16, 2021.

**Background**

The member and the claimant were married on November 22, 1997. On August 28, 2013, in preparation for his retirement, the member elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. The member retired from the Army in October 2013. On April 2, 2015, the member and the claimant divorced. The claimant was not awarded former spouse SBP coverage in the divorce decree.

The record reflects that the member remarried after his divorce from the claimant. On October 19, 2019, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. The Defense Finance and Accounting Service (DFAS) denied her claim on the basis that the member elected spouse SBP coverage when he retired, and since she was his former spouse, she was not entitled to the SBP annuity.

The claimant appealed DFAS's denial of her claim. The claimant stated that she was not aware of the requirement to change the SBP coverage from spouse to former spouse after her divorce. She stated that the member continued to pay spouse SBP coverage until he died.

In the DOHA appeal decision, the adjudicator upheld DFAS's denial of the claim for the SBP annuity. She explained that DOHA's authority was limited by statute and regulation and that an election for former spouse SBP coverage, whether voluntary, ordered, or deemed, had to have been received by DFAS within one year of the date of the divorce. The adjudicator also noted that if the member continued to pay SBP premiums when he did not have a spouse beneficiary, any refund due the member for his overpayment would be payable to his Arrears of Pay (AOP) beneficiary.

In her request for reconsideration, the claimant states that she and the member signed the paperwork for the SBP annuity before he retired while in the office of the Warrior Transition Battalion in 2013. She states that once they both signed the DD Form 2656, they were told that she would get his SBP. She also states that she is listed as the member's SBP beneficiary and she never received any correspondence from DFAS stating she was not listed as his beneficiary after their divorce. She states that the divorce lawyers and the judge also did not know about the requirement to change the SBP coverage from spouse to former spouse. She states that there are so many other former spouses experiencing the same issues. She requests an in-person hearing in front of DOHA. She also states that she and the member had two sons together, and her family needs the support that was established for them when the member retired.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. DOHA must render decisions based on the written record in front of us, and applicable statutes, regulations and our prior administrative decisions.

The SBP, set out in 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for the former spouse, the member must notify DFAS in writing of the divorce and the intention to provide coverage for the former spouse, even if the former spouse was the spouse beneficiary immediately prior to the divorce. Former spouse coverage must be established within one year from the date of the divorce. *See* 10 U.S.C. §1448(b)(3)(A). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to the former spouse. If the member fails to do so, the former spouse has one year from the date of the divorce to request a deemed election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the claimant was covered as the member's spouse SBP beneficiary from the time he retired in 2013 until such coverage ended with their divorce in 2015. The claimant was not awarded former spouse SBP coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. Further, although the member may have intended that his former spouse be covered under the SBP, he failed to establish former spouse SBP coverage

within one year of their divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2020-CL-042201.2 (November 18, 2020).

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as noted in the DOHA appeal decision, since SBP premiums for spouse coverage were deducted from the member's retired pay when he no longer had an eligible spouse beneficiary, those costs should be refunded to the proper beneficiary as AOP under 10 U.S.C. § 2771.

### **Conclusion**

The claimant's request for relief is denied and we uphold the DOHA appeal decision dated August 16, 2021. In accordance with the Department of Defense Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board